

**STATE OF DELAWARE**  
**PUBLIC EMPLOYMENT RELATIONS BOARD**

<b>INTERNATIONAL LONGSHOREMEN’S</b>	)	
<b>ASSOCIATION, LOCAL 1694-1, AFL-CIO,</b>	)	
	)	
Charging Party,	)	
	)	<b>ULP 14-10-982</b>
<b>v.</b>	)	<b>Probable Cause Determination</b>
	)	
<b>DIAMOND STATE PORT CORPORATION,</b>	)	
	)	
Respondent.	)	

**BACKGROUND**

The Diamond State Port Corporation (DSPC) is a public employer within the meaning of 19 Del. C. §1302(p) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (“PERA”).

The International Longshoremen’s Association (ILA) is an employee representative within the meaning of 19 Del.C. §1302(i). By and through its affiliated Local 1694-1 (Local 1694-1), the ILA is the exclusive bargaining representative of a bargaining unit of DSPC employees within the meaning of 19 Del.C. §1302(j).

At all times relevant to the processing of this Charge, the ILA and DSPC have been parties to a collective bargaining agreement, which has a term of October 1, 2010 through September 30, 2013. The parties engaged in negotiations for a successor agreement. As of the date of this determination, the parties have not mutually agreed upon a successor agreement.

On October 28, 2014, Local 1694-1 filed an unfair labor practice charge with the Public Employment Relations Board (PERB) alleging DSPC engaged in violation of §1307(a)(1), (a)(2) and (a)(5) of the PERA, which state:

§1307. Unfair labor practices

- (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
- (1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.
  - (2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization.
  - (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, except with respect to a discretionary subject.

Specifically, the Local 1694-1 alleges DSPC has failed to provide information it requested which was relevant and necessary for the union to “formulate proposals and make intelligent bargaining decisions” during the course of collective bargaining. Consequently, by this course of conduct, DSPC has interfered with the rights of bargaining unit employees and with the representational obligations of Local 1694-1.

On November 24, 2014, DSPC filed its Answer denying the material allegations of the Charge. DSPC maintains that its statutory duty to provide information expired when Local 1694-1 requested that the collective bargaining impasse proceed to binding interest arbitration, on or about October 4, 2013. DSPC further alleges that the right to information during the binding interest arbitration process is limited to procedures set forth in 19 Del.C. §1315 and the rules of the Public Employment Relations Board, which, it asserts, do not include written requests for information.

**DISCUSSION**

Rule 5.6 of the Rules and Regulations of the Delaware Public Employment Relations Board provides:

- (a) Upon review of the Complaint, the Answer and the Response, the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director's decision in accord with provisions set forth in Regulation 7.4. The Board will decide such appeals following a review of the record, and, if the Board deems necessary, a hearing and/or submission of briefs.
- (b) If the Executive Director determines that an unfair labor practice has, or may have occurred, he shall, where possible, issue a decision based upon the pleadings; otherwise he shall issue a probable cause determination setting forth the specific unfair labor practice which may have occurred.

For purposes of reviewing the pleadings to determine whether probable cause exists to support the charge, factual disputes revealed by the pleadings are considered in a light most favorable to the Charging Party in order to avoid dismissing a valid charge without the benefit of receiving evidence in order to resolve factual differences. *Flowers v. DART/DTC*, ULP 04-10-453, V PERB 3179, 3182 (Probable Cause Determination, 2004).

It is well established through PERB case law that the duty to bargain in good faith under the Public Employment Relations Act obligates a public employer to provide information to an exclusive bargaining representative that is necessary and relevant to that organization in performing its representational duty. *AFSCME 320 & 1102 v. City of Wilmington*, ULP 10-08-761, VII PERB 4757, 4760 (Probable Cause Determination, 2010). This obligation has been recognized by this Board, the Court of Chancery and the Delaware Supreme Court. *Bd. of Education of Colonial School District v. Colonial Education Association, DSEA/NEA*, Del.Chan., CA 14383 (1996), *affirmed Colonial Education Assn. v. Bd. of Education*, Del. Supr., Case 129, 1996, 152 LRRM 2575, III PERB 1519 (1996), (citing *Brandywine Affiliate, NCCEA/DSEA/NEA, v. Brandywine School District*, Del.PERB, ULP 85-06-005, I PERB 131, 149 (1986); *AAUP v. DSU*, Del. PERB., Decision on Remand, ULP 95-10-159, III PERB 2177

(2001); *Delaware Correctional Officers Association v. Delaware Department of Correction*, ULP No., 00-07-286, III PERB 2209, 2214 (2001), *AFSCME Locals v. DSU*, Del.PERB, ULP 10-04-739, VII PERB 4693, 4705 (2010); *Amalgamated Transit Union, Local 842 v. State of Delaware, Delaware Transit Corporation* ULP 12-02-850, VIII PERB 5493, 5497 (Probable Cause Determination, 2012).

Based on a review of the pleadings, considered in a light most favorable to the charging party, there is a sufficient basis on which to conclude that an unfair labor practice, as alleged, may have occurred.

The following facts are undisputed, as established by the pleadings:

- 1) DSPC and ILA Local 1694-1 are parties to a collective bargaining agreement which commenced on October 1, 2010 and expired on September 30, 2013.
- 2) On or about October 4, 2013<sup>1</sup>, ILA Local 1694-1 requested PERB initiate the binding interest arbitration process, pursuant to 19 Del.C. §1315.
- 3) On November 6, 2013, Local 1694-1's counsel requested information from the DSPC relevant to its evaluation of the DSPC's bargaining proposals. *Charge, Exhibit A.*
- 4) On or about December 13, 2013, the DSPC's counsel responded to Local 1694-1's request by providing some of the requested information, requesting clarification of some of the requests, and requesting Local 1694-1 enter into a confidentiality agreement prior to disclosure of certain identified documents. *Answer, Exhibit B.*
- 5) A letter dated April 28, 2014, was prepared by Local 1694-1's counsel, in

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<sup>1</sup> Although the Answer states the ILA request for binding interest arbitration was initiated by letter dated October 4, 2014, PERB takes administrative notice of the fact that the letter was, in fact, dated October 4, 2013.

response to the DSPC's December 13, 2013 response to the information request.  
*Charge, Exhibit C.*

- 6) The DSPC acknowledges receiving Local 1694-1's April 28, 2014 letter on or about May 23, 2014. DSPC did not respond to this letter. *Answer, ¶9 & ¶10.*
- 7) On or about May 5, 2014, Local 1694-1 requested additional information from the DSPC. *Charge, Exhibit D.*
- 8) DSPC responded to Local 1694-1 by correspondence dated May 12, 2014, which states, in part,:

[Binding interest arbitration] is the final step in the impasse resolution procedure and is implemented only when the negotiation and mediation processes have failed and the parties have abdicated their statutory responsibility to collectively bargain to the arbitrator to determine the terms of labor/management relationship for the period in issue. As negotiations in this matter have failed and the parties have submitted them [last, best, final offers], the parties' statutory obligations to collectively bargain have ended, including any duty to furnish information pursuant to those obligations.

Facilitation in this matter is scheduled for May 14<sup>th</sup> and 21<sup>st</sup>. Pursuant to the Executive Director's letter dated March 31, 2013, DSPC will be available to review and clarify its [last, best, final offer] in accordance with the rules and regulations regarding [binding interest arbitration].  
*Charge, Exhibit E.*

- 9) Local 1694-1 responded on or about May 13, 2014, specifically denying DSPC's contention concerning the expiration of the duty to provide information and asserting a continuing obligation. *Charge, Exhibit F.*
- 10) No further information or correspondence concerning this matter was exchanged between the parties until the instant charge was filed on October 28, 2014.

This unfair labor practice charge raises two issues, namely:

- 1) Whether there is a continuing obligation under the PERA (as part of the duty to bargain in good faith) for the employer to provide information to an exclusive bargaining representative after the binding interest arbitration process has been initiated; and
- 2) If so, whether DSPC has failed or refused to meet its statutory duty to bargain in good faith and/or interfered with the rights of bargaining unit employees or Local 1694-1 by failing to produce information which is necessary and relevant for Local 1694-1 to meet its statutory duty to represent bargaining unit employees in collective bargaining.

The first question is purely legal in nature and raises a question of first impression before PERB. The second issue requires the creation of a factual record upon which argument can be made in order to determine whether DSPC had an obligation to produce any or all of the information requested by the ILA. The second issue does not arise, however, unless the first issue is answered in the affirmative.

Consequently, whether there is a continuing duty to bargain and to provide information following initiation of the binding interest arbitration process under 19 Del.C. §1315 will be decided as a preliminary matter. Because the resolution of this unfair labor practice charge concerns and may directly impact a pending interest arbitration proceeding between these parties, the parties are afforded the opportunity and requested to provide expedite argument on the preliminary issue. The issuance of the decision on the preliminary issue will also be expedited.

Should the determination be that the duty to provide information continues after initiation of the binding interest arbitration process, consideration will then turn to whether the employer

did, in fact, meet its statutory obligations. It will be Local 1694-1's burden to establish the information it requested was necessary and relevant for it to perform its representational duties.

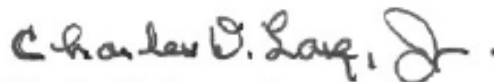
### **DETERMINATION**

The pleadings constitute probable cause to believe that an unfair labor practice, as alleged, may have occurred.

The parties are directed to provide expedited argument concerning whether there is a continuing duty to provide information following initiation of the binding interest arbitration process under 19 Del.C. §1315. This issue will be decided as a preliminary matter.

If it is determined that the duty to provide information continues after initiation of the binding interest arbitration process, a hearing will be convened for purposes of creating a record on which a determination can be made as to whether the employer did, in fact, violate its statutory obligations.

Dated: December 12, 2014



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CHARLES D. LONG, JR., Hearing Officer  
Delaware Public Employment Relations Bd.